

REMARKS

Disposition of the Claims

Upon entry of the amendments herein, Claims 1, 4-7, 16-17 and 25 are pending in the instant application. Claims 12-15 are withdrawn and Claims 2-3, 8-11 and 18-24 have been cancelled.

The phrase "or an optical isomer thereof, or a pharmaceutically acceptable salt thereof" appeared twice in Claim 1. Applicants have amended Claim 1 to remove the redundancy. In addition, Claim 1 has been amended to add "and" to separate the definition of the variables in the first and the second definition of "R".

Claims 12-17 and 25 have been amended to indicate that optical isomers and pharmaceutically acceptable salts of the compounds of the invention are included in claim scope. Support for this amendment can be found on page 18, first paragraph and on page 22, last paragraph to page 23, line 14.

No new matter has been added.

Objection to Claims 1 and 18

The Examiner has objected to Claim 1 stating that the first "or" in the last line of Claim 1 should be deleted. Applicants have amended Claim 1 to add "and" to separate the definition of the variables in the first and the second definition of "R". Applicants believe that the first "or" is necessary because it indicates that Applicants are claiming a compound as defined in the claim or an optical isomer of the compound. If the "or" is removed as the Examiner suggest, in order for the claim to read on a composition, both a compound as defined in the claim and an optical isomer of that compound would have to be present. Therefore, Applicant has left the first "or" in the claim.

The Examiner has objected to Claim 18 because "pharmaceutical" was spelled incorrectly. Applicants have cancelled Claim 18 obviating the objection.

Rejection of Claim 18 Under 35 USC § 112, First Paragraph

The Examiner has rejected Claim 18 for lack of enablement. Applicants respectfully disagree. However, solely in the interest of expediting prosecution of the instant application, Applicants have cancelled Claim 18 in order to obviate this rejection.

Provisional Rejection of Claims 1, 4-7, 16-18 and 25 under the Judicially Created Doctrine of Obviousness-type Double Patenting

Claims 1, 4-7, 16-18 and 24 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the compound and/or composition claims of United States Patent Application Nos. 11/547,046; 11/547,227; 12/088,594; and 12/088,608.

M.P.E.P. § 804(I)(B)(1) states the following:

1. Nonstatutory Double Patenting Rejections

If a "provisional" nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer.

Applicants respectfully submit the present claims are not obvious over the co-pending applications 11/547,046; 11/547,227; 12/088,594; or 12/088,608. However, Applicants have filed an IDS in 11/547,046; 11/547,227; 12/088,594; and 12/088,608 citing the Office Action in the instant case to make the Examiners in these cases aware of the non-statutory double patenting rejection in the instant case. Since application 11/547,046 has been allowed, Applicants have filed an RCE in order to submit the IDS in this case.

Since there are no remaining rejections in the instant case and it has an earlier filing date than Application Nos. 11/547,046; 11/547,227; 12/088,594; and 12/088,608, Applicants respectfully request that the provisional double patenting rejection be withdrawn in the instant case.

Rejoinder of Process Claims 12-15

In the paragraph spanning page 7-8 of the restriction requirement mailed on April 4, 2008, the Examiner indicated that withdrawn process claims that depend from or otherwise require all the limitation of allowable product claims will be considered for rejoinder. Applicants respectfully request that process Claims 12-15 which depend from Claim 1 be rejoined with the pending claims and that Claims 12-15 are in condition for allowance.

CONCLUSION

It is respectfully submitted that this application is in condition for allowance.

If there are any remaining issues or the Examiner believes that a telephone conference with the Applicants' Attorney would be helpful in expediting prosecution of this application, the Examiner is invited to call the undersigned at (617)-871-7802.

Applicants have authorized the payment for a petition for a two-month extension of time to file this response. Applicants believe that no additional fees are due with this filing. However, if any fees are required, the Commissioner is authorized to charge Deposit Account No. 50-4409 in the name of Novartis for any fees due.

Respectfully submitted,

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